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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

COMMUNITY FOR CREATIVE NON-VIOLENCE, *et al.*,

Petitioners,

—v.—

JAMES EARL REID,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF THE COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION AND THE INFORMATION INDUSTRY ASSOCIATION, *AMICI CURIAE*, IN SUPPORT OF PETITIONERS

RICHARD DANNAY*
MORTON DAVID GOLDBERG
JOHN F. BURLEIGH

SCHWAB GOLDBERG PRICE & DANNAY
1185 Avenue of the Americas
Suite 3655
New York, New York 10036
(212) 575-8150

Counsel for *Amici Curiae*

* Counsel of Record

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BRIEF OF THE COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION AND THE INFORMATION INDUSTRY ASSOCIATION, *AMICI CURIAE*, IN SUPPORT OF PETITIONERS

The Computer and Business Equipment Manufacturers Association and the Information Industry Association submit this brief as *amici curiae* in support of petitioners. The parties to this action have given their written consent to the filing of this brief pursuant to Rule 36 of the Rules of this Court. Copies of the letters of consent have been filed with the clerk.

INTEREST OF THE *AMICI*

The Computer and Business Equipment Manufacturers Association ("CBEMA") is a trade association of 33 companies on the leading edge of high technology in the computer, business equipment and telecommunications industries in the United States. Each year, CBEMA companies invest billions of dollars in the creation and distribution of thousands of copyrighted computer programs, as well as many other copyrighted works, including books, manuals and research journals, and instructional, promotional and advertising materials in print, videotape and other forms.

The Information Industry Association ("IIA") is a trade association representing over 700 companies that pursue the business opportunities associated with the creation, dissemination and use of information products and services online and in machine-readable and printed copies. IIA companies make substantial investment in the creation and dissemination of a wide range of copyrighted information, including news and legal research materials; scholarly and academic studies; economic, financial and business data; and many other valuable forms of information.[1]

In creating many thousands of copyrighted works each year, it is common for CBEMA and IIA members to hire and use the work of independent contractors as well as their own salaried employees. In addition, members of *amici* acquire from third parties the rights in many copyrighted works that independent contractors produce for the third parties as works for hire. Independent contractors are frequently hired, for example, to prepare screen displays for members' computer programs, or text or graphics for their instruction manuals or other documentation; to select, coordinate and arrange data for their data bases; to create photographs or artwork for their promotional or advertising materials; to prepare television commercials or portions of them; and to design the packaging for the products.

1 Lists of CBEMA's members and IIA's members are included in Appendix A, *infra*.

If such works created in whole or in part by independent contractors are denied treatment as works made for hire, and instead are treated as joint works, the resulting fragmentation of ownership and control of copyrights would be a strong disincentive to the members of *amici* to make the investment necessary for the creation and dissemination of the works. Indeed, a likely result is that independent contractors would be retained less frequently and would have fewer opportunities for remuneration in creating such works. Fragmentation would be compounded exponentially when successive new versions, editions and other "derivative works" are prepared, especially if a variety of independent contractors are used. The requirements for coordinating the ownership and control of the successive contributions probably could not be surmounted sufficiently to facilitate the necessary exploitation of the rights in such works on an exclusive basis.

Although companies large and small must retain outsiders for significant portions of their creative work, the smaller the member company of *amici* the greater is its need to hire independent contractors to contribute their creativity to the company's authorship of its works. Thus, the disincentive that the Court of Appeals' approach in this case would impose for the investment in creating and disseminating copyrighted works would be even more of a burden on smaller companies than on the larger companies.

SUMMARY OF ARGUMENT

Under the 1976 Copyright Act, in the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author. 17 U.S.C. 201(b). A "work made for hire" is defined in 17 U.S.C. 101 and includes, under part (1) of the definition, "a work prepared by an employee within the scope of his or her employment" and, under part (2), "a work specially ordered or commissioned" under certain circumstances. The terms "employee" and "employment" are not defined in the 1976 Act or in its legislative history.

Nothing in the 1976 Act or its legislative history indicates that Congress intended that a copyrightable work of an independent contractor could not, under any circumstances, qualify as a work for hire under part (1) of the definition concerning "employment." *Amici* submit that the proper interpretation of "employee" includes "independent contractor" whenever the hiring party, in the exercise of its control over the contractor, satisfies the copyright law's traditional test of "authorship" by contributing originality and at least a modicum of intellectual labor.

Under the 1909 Copyright Act, which the 1976 Act replaced, an employer in the case of a work made for hire was also considered an author. The terms "work made for hire" and "employee" were not defined. A significant and well-established body of case law under the 1909 Act treated an independent contractor as an employee, and the hiring party as an employer, under certain circumstances. Nothing in the 1976 Act or its legislative history, however, even refers to this prior case law, let alone reflects any congressional intent to dispense with it in those circumstances where the hiring party's contribution is at least sufficient to meet the test of authorship under the copyright laws. It is not conceivable that such a fundamental, indeed radical, change in existing law—had such a change been intended—would have gone unremarked in the legislative history of the 1976 Act.

If the scope of "employee" is given the narrow interpretation advocated by respondent, thus excluding all works by independent contractors from part (1) of the work for hire definition in the 1976 Act, there will be serious adverse consequences clearly not intended by Congress.

No one disputes that a narrow interpretation of the scope of the work for hire provisions will encourage a corresponding increase in claims of co-authorship in works denied work for hire treatment. Co-owners of a copyright under the 1976 Act are considered tenants in common, as they were under the 1909 Act, with each co-owner having an independent right to use or license the use of a work without the consent of the other co-

owners (subject only to a duty of accounting to the other co-owners for any profits). However, effective exploitation by a licensee is possible only if the licensee has been granted *exclusive* rights, which a single co-owner cannot grant. Since a co-owner can grant only *nonexclusive* rights, a licensee would need the consent of each and every one of the co-owners in order to acquire an exclusive license.

Multiple authorship is thus likely to result in the fragmentation of ownership and control of copyrights, increased difficulty and cost in acquiring exclusive rights, and ever-increasing interference with the dissemination of creative works, a principal purpose of the copyright system.[2]

ARGUMENT

I.

NOTHING IN THE 1976 COPYRIGHT ACT OR ITS LEGISLATIVE HISTORY SUGGESTS THAT AN INDEPENDENT CONTRACTOR CAN NEVER BE AN "EMPLOYEE" UNDER PART (1) OF THE ACT'S DEFINITION OF "WORK MADE FOR HIRE"

Congress did not intend that an independent contractor could never be an "employee" under part (1) of the "work made for hire" provision of the Copyright Act of 1976 ("1976 Act"), 17 U.S.C. 101 *et seq*. This conclusion follows from examination of the 1976 Act and its legislative history, as well as the predecessor law, the Copyright Act of 1909 ("1909 Act"), 17 U.S.C. 1 *et seq*. (repealed), and the cases interpreting it.

A conflicting interpretation of the 1976 Act's work for hire provision was offered in *Easter Seal Society for Crippled Children* v. *Playboy Enterprises*, 815 F.2d 323 (5th Cir. 1987), *cert. denied*, 108 S.Ct. 1280 (1988) ("Easter Seal"), and was fol-

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2 "The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const., art. I, § 8, cl. 8.

lowed in this case, *Community for Creative Non-Violence* v. *Reid*, 846 F.2d 1485 (D.C. Cir. 1988) (Pet. App. 1a-28a),[3] *cert. granted*, 57 U.S.L.W 3333 (U.S. Nov. 7, 1988) (No. 88-293) ("CCNV"). The courts in *Easter Seal* and *CCNV* found that an independent contractor cannot be regarded as an "employee" under part (1) and, therefore, that the work of an independent contractor can be placed in the "work made for hire" category only when the work falls under part (2) of the definition. More specifically, those courts held that unless a creator is an "employee" within the rules of agency law (see Restatement (Second) of Agency § 220 (1958)), a work cannot be considered a "work made for hire" under the 1976 Act unless that work has been specially ordered or commissioned, falls within one of the nine specific categories enumerated in part (2), and the parties expressly agree in a writing signed by them that the work shall be considered a work made for hire.

At least two other courts of appeals disagree and have held that under certain circumstances an independent contractor can be considered an "employee" under part (1) of the 1976 Act's work for hire definition. *Aldon Accessories Ltd.* v. *Spiegel, Inc.*, 738 F.2d 548, 552 (2d Cir.), *cert. denied*, 469 U.S. 982 (1984) ("Aldon") ("work made for hire" found where independent contractor was "actually sufficiently supervised and directed by the hiring party" to be considered an "employee," because "Congress intended the prior law in such situations to remain unchanged"); *Evans Newton Inc.* v. *Chicago Systems Software*, 793 F.2d 889 (7th Cir.), *cert. denied*, 479 U.S. 949 (1986) ("Evans"); *see Brunswick Beacon, Inc.* v. *Schock-Hopchas Publishing Co.*, 810 F.2d 410 (4th Cir. 1987).

Amici submit that the decisions in *CCNV* and *Easter Seal* incorrectly interpret the 1976 Act and its legislative history and are contrary to sound copyright policy.

3 "Pet. App." refers to the appendix to the petition for a writ of certiorari.

A. The 1976 Copyright Act "Work Made For Hire" Provisions

The 1976 Act states that copyright ownership "vests initially in the author or authors of the work" and that the "authors of a joint work are coowners of copyright in the work." 17 U.S.C. 201(a). In the case of a "work made for hire," the 1976 Act provides that "the employer or other person for whom the work was prepared is considered the author for purposes of" the Act "and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright." 17 U.S.C. 201(b).

A "work made for hire" is defined in the 1976 Act, 17 U.S.C. 101, as

> (1) a work prepared by an employee within the scope of his or her employment; or
>
> (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. . . .

The terms "employee" and "employment," used in part (1) of the work for hire definition, are not themselves defined in the 1976 Act or in its legislative history.[4]

B. The 1909 Copyright Act "Work Made For Hire" Provisions

Similarly, in the 1909 Copyright Act, which the 1976 Act replaced, the term "author" included "an employer in the case of works made for hire." 17 U.S.C. 26 (repealed). The terms

4 The work for hire provision is significant in several contexts of the 1976 Act: for example, such works are not subject to the provisions under which authors or their statutory heirs may terminate certain transfers and licenses, 17 U.S.C. 203 and 304(c); 17 U.S.C. 304(a) (renewals of copyright); 17 U.S.C. 302(c) (duration of copyright).

"works made for hire" and "employer" (or "employee") were not defined, however, in the 1909 Act or in its legislative history.[5] It remained for case law to define the scope of these terms.

C. Case Law Under The 1909 Copyright Act Applied Its "Work Made For Hire" Provisions To "Independent Contractors" As Well As "Employees"

Under the 1909 Act, the "work made for hire" doctrine was applicable whenever the creator's work was produced at the instance and expense of the hiring party or, in other words, when the hiring party was the motivating factor in inducing creation of the work. It was sufficient that the hiring party had the right (whether or not the right was actually exercised) to direct and supervise the creator's work.

It was firmly established, moreover, that the work for hire principle applied to "independent contractors" as well as to "employees." Put differently, under the 1909 Act, independent contractors could be statutory "employees." *Brattleboro Publishing Co.* v. *Winmill Publishing Corp.*, 369 F.2d 565, 568 (2d Cir. 1966) ("We see no sound reason why these same [work for hire] principles are not applicable when the parties bear the relationship of employer and independent contractor."); *Picture Music, Inc.* v. *Bourne, Inc.*, 457 F.2d 1213, 1216, 1217 (2d Cir.), *cert. denied*, 409 U.S. 997 (1972) ("That she acted in the capacity of an independent contractor does not preclude a finding that the song was done for hire. . . ."; the "absence of a fixed salary" and "the freedom to do other work" are "never conclusive" in an "independent contractor situation"; "[t]he purpose of the statute is not to be frustrated by conceptualistic formulations of the employment relationship."); *Murray* v. *Gelderman*, 566 F.2d 1307, 1310-11 (5th Cir. 1978) ("[T]he nature of the employment relationship is not dispositive; for example, the works for hire doctrine is applicable when the parties are employer and independent contractor." *Id.* at 1311, n.7.)[6]

5 *See, e.g.*, 17 U.S.C. 24 (repealed), the provision dealing, among other things, with renewal of copyright in works made for hire.

As one commentator has put it, "under the old act, the distinction between an 'employee' and an 'independent contractor' was a distinction without a difference." O'Meara, "*Works Made For Hire" Under the Copyright Act of 1976—Two Interpretations*, 15 Creighton L. Rev. 523, 524 (1982) ("O'Meara").

D. Neither The 1976 Act Nor Its Legislative History Suggests That Congress Intended To Abolish The 1909 Act Case Law Treating "Independent Contractors" As Copyright "Employees"

Because the terms "employee" and "employment" are not defined or explained, the language of part (1) of the 1976 Act's work for hire definition is, concededly, "equivocal." *Easter Seal*, 815 F.2d at 328. But nothing in the House or Senate reports which accompanied the proposed 1976 Act (or elsewhere) rejects the substantial body of law under the 1909 Act which included independent contractors as employees. Nor does the legislative history reveal any congressional intent that an "independent contractor" could never be an "employee" under part (1) of the new law's work for hire definition. H.R. Rep. No. 1476, 94th Cong., 2d Sess. 121 (1976), reprinted in 1976 U.S. Code Cong. & Ad. News 5659, 5736-37 ("House

6 *See also Yardley* v. *Houghton Mifflin Co.*, 108 F.2d 28 (2d Cir. 1939), *cert. denied*, 309 U.S. 686 (1940); *Lin-Brook Builders Hardware* v. *Gertler*, 352 F.2d 298, 300 (9th Cir. 1965); *Scherr* v. *Universal Match Corp.*, 417 F.2d 497, 500 (2d Cir. 1969), *cert. denied*, 397 U.S. 936 (1970) ("The essential factor . . . is whether the employer possessed the right to direct and to supervise the manner in which the work was being performed."); *Siegel* v. *National Periodical Publications, Inc.*, 508 F.2d 909, 914 (2d Cir. 1974); *Epoch Producing Corp.* v. *Killiam Shows, Inc.*, 522 F.2d 737, 744 (2d Cir. 1975), *cert. denied*, 424 U.S. 955 (1976); *Real Estate Data Inc.* v. *Sidwell Co.*, 809 F.2d 366, 371 (7th Cir. 1987) ("The [1909 Act's work made for hire] rule applies to independent contractors, as well as employees."); *Easter Seal*, 815 F.2d at 327 ("[A]t time of the adoption of the 1976 Act, [there was] an almost irrebutable presumption that any person who paid another to create a copyrightable work was the statutory 'author' under the 'work for hire' doctrine").

Report") and S. Rep No. 473, 94th Cong., 1st Sess. 104-105 (1975) ("Senate Report"); H.R. Rep. No. 1733, 94th Cong., 2d Sess. (1976), reprinted in 1976 U.S. Code. Cong. & Ad. News 5810 ("Conference Report").

The *Easter Seal* court acknowledged that its interpretation of the 1976 Act, excluding "independent contractors" from "employees," was a "radical break" from the work for hire doctrine under the 1909 Act. 815 F.2d at 335, 330. *Amici* submit that it is not conceivable that such a fundamental, sweeping revision of existing law, had it been intended, would have gone unremarked or unnoticed in the extensive legislative history accompanying the 1976 Act. *Aldon*, 738 F.2d at 552; *Easter Seal*, 815 F.2d at 331. Nowhere do the House and Senate Reports, for example, even refer to, let alone criticize, the *Brattleboro*, *Picture Music* and other federal appellate court decisions on work for hire, cases which formed part of an important and noteworthy body of law that could not have escaped attention and comment.

In other instances where Congress did intend to revise or supplant existing case law, that intent was expressly disclosed. *See, e.g.*, House Report at 52 ("This broad language [concerning statutory copyrightability] is intended to avoid the artificial and largely unjustifiable distinctions, derived from cases such as *White-Smith Publishing Co.* v. *Apollo Co.*, 209 U.S. 1 (1908) . . . ."); at 64 ("One of the principal purposes of the definition was to make clear that, contrary to the decision in *Metro-Goldwyn-Mayer Distributing Corp.* v. *Wyatt*, 21 C.O. Bull. 203 (D. Md. 1932), performances in 'semipublic' places . . . are 'public performances' subject to copyright control."); and at 124 ("[T]he bill would change a common law doctrine exemplified by the decision in *Pushman* v. *New York Graphic Society, Inc.*, 287 N.Y. 302 . . . (1942)."). *See* Register of Copyrights, 87th Cong., 1st Sess., Copyright Law Revision: Report on the General Revision of the U.S. Copyright Law 89-90 (House Comm. Print 1961) ("Register's Report") (recommending test of what constitutes work of joint authorship that would depart from two decisions of the Second Circuit).

To the contrary, there are indications that Congress did not intend to alter the 1909 Act concerning part (1) "employees." House Report at 121 ("Section 201(b) of the bill adopts one of the basic principles of the present law: that in the case of works made for hire the employer is considered the author of the work, and is regarded as the initial owner of copyright. . . . The presumption that initial ownership rights vest in the employer for hire is well established in American copyright law. . . ."); Senate Report at 104; *Aldon*, 738 F.2d at 552; *Easter Seal*, 815 F.2d at 330-331; O'Meara at 526, 527-528, 533-534.

E. Nothing In Part (2) Of The 1976 Act's "Work Made For Hire" Definition Precludes An Interpretation Of Part (1) Whereby "Employees" Can Include Certain Independent Contractors

There is nothing in the language or legislative history of part (2) of the 1976 Act's work for hire definition which prevents an interpretation of part (1) that would permit an independent contractor to be considered an "employee" under certain circumstances. Contrary to *Easter Seal*, 815 F.2d at 329, the two-part definition of "work made for hire" does not reflect a "simple dichotomy" between "employees" (part (1)) and "independent contractors" (part (2)), with the two classes being mutually exclusive.

In fact, part (2) does not mention the term "independent contractor." Moreover, part (2) surely includes an "employee" where, for example, the employee, acting outside the scope of his or her employment,[7] is commissioned to prepare a work of the type covered by part (2).

Part (1) focuses solely on the nature of the relationship—"employment"—between the parties and their status as

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7 The phrase "within the scope of his or her employment" was intended to make it clear that works created by employees on their own initiative outside of their employment, are not included in part (1). *See* Varmer, 86th Cong., 2d Sess., Copyright Law Revision: Study No. 13, *Works Made for Hire and on Commission* (1958) 123, 141 (Comm. Print 1960) ("Varmer Study").

"employer" and "employee," albeit none of these terms is defined; no agreement between the parties is required, and any type of work is covered. Part (2) focuses, instead, on the nature of the work—it must be both "specially ordered or commissioned" and fall within one of the nine specified categories of works; and further, there must be an express agreement signed by the parties stating that the work shall be considered a work made for hire. By "specially ordered or commissioned" the statute refers to a work prepared after the relationship between the parties began, that is, after the hiring party requested creation of the work. *See Siegel* v. *National Periodical Publications, Inc.*, 508 F.2d 909, 914 (2d Cir. 1974) ("Superman" was completely developed before employment relationship started, so could not be work made for hire). Consequently, not all works by "independent contractors" are works "specially ordered or commissioned," or vice versa, despite what was said in *Easter Seal*, 815 F.2d at 329.

Parts (1) and (2) are thus different in their requirements and are not mutually exclusive. Part (2) reflects a "compromise" spelling out those specific categories of specially ordered or commissioned works (whether created by "employees" or "independent contractors") that can be considered "works made for hire" *under part (2)*, if the parties agree, and those that cannot be considered works for hire *under part (2)*, whether or not the parties agree. House Report at 121. Qualification for work made for hire status under part (2), however, does not preclude eligibility under part (1), where the test and pertinent factors are different. *Aldon*, 738 F.2d at 552 (independent contractors "actually sufficiently supervised and directed by the hiring party" are "employees" under part (1)).

Part (2) was a compromise between, on the one hand, draft legislation (supported by certain individual creators) that would have excluded from the work for hire provision all works made on special order or commission and, on the other hand, draft legislation (supported by book publishers and motion picture producers) that would have included all specially ordered or commissioned works if the parties expressly agreed in writing to consider them as works made for hire. Angel and Tannenbaum,

Works Made For Hire Under S. 22, 22 N.Y.L. Sch. L. Rev. 209, 230-232 (1976) ("Angel"); Hamilton, *Commissioned Works as Works Made For Hire Under the 1976 Copyright Act: Misinterpretation and Injustice*, 135 U. Pa. L. Rev. 1281, 1291-1294 (1987) ("Hamilton"); O'Meara at 526; Penchina, *The Creative Commissioner: Commissioned Works Under the Copyright Act of 1976*, 62 N.Y.U. L. Rev. 373, 381-386 (1987); Hardy, *Copyright Law's Concept of Employment—What Congress Really Intended*, 35 J. Copr. Soc. U.S.A. 210 (1988) ("Hardy"); *CCNV*, 846 F.2d at 1490, n.7 (Pet. App. at 9a, n.7).

But, at bottom, the compromise reflected in part (2) simply took account of the publishing and economic reality that certain kinds of specially ordered or commissioned works by their very nature should be eligible for work for hire status merely by agreement of the parties, without regard to the status or relationship of the parties (as employee or independent contractor) and without regard to the presence or the absence of direction and supervision, or the nature or extent of such control, by the hiring party. *Easter Seal*, 815 F.2d at 329, 331 ("The nine kinds of activities listed in § 101(2) . . . all involve situations where, in addition to owning the copyrights in the works by contract, it would be very useful for buyers to be able to become statutory 'authors.' " . . . "The activities in § 101(2) look like the kind of activities where the buyer normally wants and needs to be a statutory author in order to gain complete initial ownership of a collaborative project."); *Aldon*, 738 F.2d at 552.

Part (2) thus addressed a set of concerns different from that addressed by part (1). The two parts were intended to coexist, not compete or conflict. Eligibility under one part does not preempt eligibility under the other. For example, it cannot seriously be contended that a work for use as part of a motion picture (a part (2) category), specially requested by an employer from a full-time salaried employee working within the scope of his employment, is precluded from work for hire status under part (1) because the work is a type potentially subject to part (2).

By the same token, an independent contractor whose work is not eligible to be a work for hire under part (2) may nonetheless have his work treated as one for hire under part (1) if he qualifies as an "employee." The question, addressed in the next section, is under what circumstances an independent contractor may be considered an "employee" under part (1) of the work for hire definition.

II.

AN INDEPENDENT CONTRACTOR CAN BE AN "EMPLOYEE" UNDER PART (1) OF THE 1976 ACT'S DEFINITION OF "WORK MADE FOR HIRE" WHEN THE HIRING PARTY EXERCISES SUFFICIENT CONTROL OVER THE CONTRACTOR TO SATISFY THE TRADITIONAL TEST OF "AUTHORSHIP" UNDER THE COPYRIGHT LAW

Amici submit that the proper interpretation of "employee," as used in part (1) of the 1976 Act's "work made for hire" definition, should include "independent contractor" whenever the hiring party has exercised sufficient control over the contractor to satisfy the traditional test of "authorship" under the copyright law. This standard would be fulfilled when the hiring party contributes originality and at least a modicum of intellectual labor.

The Varmer Study (*supra* at 11 n.7), at 142, explained the principal basis for a possible distinction between works made by employees and works made by independent contractors:

> "Underlying this distinction is the premise that an employer generally gives more direction and exercises more control over the work of his employee than does a commissioner with respect to the work of an independent contractor."

See Angel at 236 ("[T]he control and direction . . . that an employer often exerts over his employee" may "qualify" the employer "as a type of author deserving the benefits that flow

from designating a work as one made for hire."); Hamilton at 1289-1290.

Thus, when the hiring or commissioning party in fact exercises creative control, *i.e.*, supervision and direction, over an independent contractor, there is no sound reason to maintain any distinction between "employees" and "independent contractors" under the work for hire provisions. According to the Varmer Study, at 142, apart from the control factor "the policy considerations regarding the ownership of copyright in commissioned works are in many ways similar to those with respect to works made in the course of employment." As the study explained (*id.*):

> "Both classes of works are produced for, pursuant to the initiative and order of, and against payment by, a person other than the creator. The differences in type of payment or regularity of working hours between the employment and commission situations would not seem to be crucial reasons for different treatment."

See Aldon, 738 F.2d at 552 (noting criticism of those cases under the 1909 Act where the work for hire doctrine was "applied to all works prepared by an independent contractor, regardless of the presence or absence of direction and supervision by the hiring party" and finding that the 1976 Act was intended to alter the doctrine only in "those situations where the contractor did all of the creative work and the hiring party did little or nothing"); H.R. Rep. No. 83 (to accompany H.R. 2512), 90th Cong., 1st Sess. 86 (1967); Ringer, 86th Cong., 2d Sess., Copyright Law Revision: Study No. 31, *Renewal of Copyright* (1960) 105, 140 n.245 (Comm. Print 1961) ("Ringer Study").[8]

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8 Not only is it clear that "employee" should include an "independent contractor" where the hiring party exercises creative control, but there is no basis for inferring that Congress intended part (1) of the work for hire definition to be restricted to salaried employees only. Thus, for example, the suggestion of the Varmer Study (at 141) that the definition should "specify 'employment on a salary basis'" was not

(*Footnote continued on following page*)

The *Aldon* court did not specify the precise standard for determining when an independent contractor has been "sufficiently" supervised and directed by the hiring party to be considered an "employee." 738 F.2d at 552. *Amici* believe that the exercise of such creative control is sufficient when the hiring party's contribution satisfies the copyright law's traditional test of "authorship," that is, when the hiring party's contribution meets the more than *de minimis* threshold required for authorship. 1 M. Nimmer & D. Nimmer, Nimmer on Copyright §§ 1.06[A] and 1.08[C][1] (1988 ed.) ("Nimmer") ("the essence of authorship" is "originality," that is, independent effort, and "a modicum of intellectual labor"); House Report at 51-52; *Aldon*, 738 F.2d at 553 (hiring party "did much more than communicate a general concept or idea" to the independent contractors, that is, more than "leaving creation of the expression solely to them").

There is no reason, moreover, to require the hiring party to meet any different standard of authorship than that required of other creators. *See CCNV*, 846 F.2d at 1495-98 (Pet. App. 19a-26a) (one qualifies as joint author if his original contribution reflects more than a minimal amount of creativity, even if that contribution standing alone would not be copyrightable); Penchina, *The Creative Commissioner: Commissioned Works Under the Copyright Act of 1976*, 62 N.Y.U. L. Rev. 373 (1987).

The test proposed here will provide appropriate incentive to hiring parties whose creative control, initiative, expense and risk-bearing justify their being considered authors. At the same time, the test will not deprive an independent contractor of authorship status or copyright ownership for works conceived and prepared on his own initiative and economic risk. These

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(*Footnote continued from previous page*)

accepted by Congress, and the statute thus omits any reference to "salaried" employees. *Aldon*, 738 F.2d at 552 (no congressional intent to limit part (1) to "regular" or "formal" employees); *Evans*, 793 F.2d at 894; *CCNV*, 846 F.2d at 1490 n.6 (Pet. App. 9a, n.6); Ringer Study at 141 & nn.256, 257.

works (of any type) would not fall under either part (1) or part (2) of the work for hire definition because, among other reasons, there would be no control over the contractor and the works would not be specially ordered or commissioned. Moreover, the test would not interfere with the right of the parties under Section 201(b) of the 1976 Act, 17 U.S.C. 201(b), to agree that the employee is to own some or "all of the rights comprised in the copyright." 1 Nimmer § 1.06[C].

We do not believe that the *Aldon* test (or the test proposed by *amici*) is "too fact-specific for each work and therefore less predictable" by the parties. *Easter Seal*, 815 F.2d at 334. In any case, it is no more fact-specific or less predictable than the test adopted by the *CCNV* and *Easter Seal* courts, which depends on the host of factors, including actual control and right to control, to be considered under the Restatement (Second) of Agency § 220. Hardy at 256-257 (The "suggestion that the common law of agency will avoid work-by-work determinations seems misguided. . . . [T]he agency test of employment is, in short, no better in predictability than *Aldon*'s more circumscribed test of actual control.")

III.

EXCLUSION OF WORKS BY INDEPENDENT CONTRACTORS FROM PART (1) OF THE "WORK MADE FOR HIRE" DEFINITION WILL HAVE ADVERSE CONSEQUENCES FOR THE CREATION AND DISSEMINATION OF COPYRIGHTED WORKS

A determination that part (2) of the "work made for hire" definition is the exclusive provision governing works by independent contractors will unquestionably lead to the proliferation of joint authorship claims in those works which are denied work for hire treatment under part (1). *CCNV*, 846 F.2d at 1497 n.17 (Pet. App. 25a, n.17) ("With the substantial cutback of the work for hire doctrine under the 1976 Act, more cases of this genre can be expected to appear under the joint authorship

rubric." This was not previously the case "because [of] the broad scope of the work for hire doctrine under the 1909 Act.")

Moreover, these claims are likely to succeed "since any plaintiff who actually controls an independent contractor will be a co-author of the work." *Easter Seal*, 815 F.2d at 334, and 333, 336-337; *CCNV*, 846 F.2d at 1495-98 (Pet. App. 19a-26a) ("Reid, as sculptor, contributed more than a minimal amount of creativity to 'Third World America.' That is enough, once the work for hire doctrine is out of the picture, to render him an author of a protected work" under a joint authorship theory. *Id.* at 1495 (Pet. App. 21a)).

Co-owners of a copyright are considered tenants in common under the 1976 Act (as was so under the 1909 Act), with each co-owner thus having an independent right to use or license the use of a work without the consent of the other co-owners (subject only to the duty to account to the other co-owners for any profits). House Report at 121; *CCNV*, 846 F.2d at 1498 (Pet. App. 26a-27a).[9] A co-owner can grant only nonexclusive rights, however. Thus a licensee would need the consent of all of the co-owners in order to obtain an exclusive license. *Edward B. Marks Music Corp.* v. *Jerry Vogel Music Co.*, 140 F.2d 266 (2d Cir. 1944); *Donna* v. *Dodd, Mead & Co.*, 374 F.Supp. 429 (S.D.N.Y. 1974); 1 Nimmer §§ 6.10 n.3, 6.10[C] and 6.11.

The proliferation of joint authorship claims, in place of work for hire claims, would thus likely result in the fragmentation of ownership and control of copyrights and increased difficulty and cost in acquiring exclusive rights, which alone have any real economic value. *See* Ringer Study at 179 & n.561 ("This loss of exclusivity has been criticized as reducing the value of a copyright. . . ."). For example, in *CCNV*, such fragmentation because of co-authorship might well extend beyond the parties to the "others" engaged by CCNV and to the "dozen different people" who assisted Reid. *CCNV*, 846 F.2d 1497-98 (Pet.

9 Joint authors' "contributions need not be equal either quantitatively or qualitatively; though contribution of each must be more than *de minimis*, one may qualify as a joint author even if his contribution, 'standing alone would not be copyrightable.' " *CCNV*, 846 F.2d at 1496 (Pet. App. 23a) (citation omitted).

App. 26a).[10] Moreover, the preparation of successive new versions, editions and "derivative works," 17 U.S.C. 101, would substantially aggravate the problem.

That proliferation is likely, in turn, to provide an increasingly strong disincentive for the necessary investment in the creation of copyrighted works and their dissemination, which are two of the principal purposes of the copyright laws. *Sony Corp.* v. *Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984); *Twentieth Century Music Corp.* v. *Aiken*, 422 U.S. 151, 156 (1975) ("Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts."); O'Meara at 532-542 (describing specific problems of joint ownership and of excluding works by independent contractors from part (1) of the work for hire definition).

Computer programs and databases created by and for *amici* in today's technology are so complex and sophisticated that they are rarely created by a single individual; indeed, they are commonly created by dozens or even hundreds of people. The specter of joint authorship for such works would be a strong disincentive to their creation and dissemination in those circumstances where it is now customary to hire non-salaried independent contractors to contribute their creativity.

There is, of course, no hint anywhere in the 1976 Act or its legislative history that Congress ever intended such an expansion of the scope of joint authorship, or that Congress ever intended the adverse impact that constriction of the work for hire doctrine would have. Indeed, in the motion picture area, where either a co-ownership or work for hire arrangement might apply, Congress assumed that the work for hire status would prevail. House Report at 120-121.

Moreover, the term of copyright provided by Congress for joint works applies only where the joint work was "prepared by

10 Multiplying joint authorship claims in such a manner would also likely impose additional procedural burdens on courts and parties to copyright infringement actions in the important matters of joinder and intervention of parties. 17 U.S.C. 501(b); Fed. R. Civ. P. 19.

two or more authors who did not work for hire." 17 U.S.C. 302(b). Where an individual and a corporation are held to be co-authors—that is, where a joint work has been prepared by two or more authors, one or more of whom did work for hire—Congress specified no term of copyright, thus suggesting that it did not intend such situations to be common.

Amici submit that these harmful consequences would be avoided by the recognition that an "independent contractor" can be considered an "employee" under part (1) of the "work made for hire" definition, in the circumstances proposed in this brief.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

Richard Dannay*
Morton David Goldberg
John F. Burleigh

Schwab Goldberg Price & Dannay
1185 Avenue of the Americas
New York, New York 10036
(212) 575-8150

* Counsel of Record Counsel for *Amici Curiae*

December 21, 1988

APPENDIX

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MEMBERS OF THE COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

3M
AMP Incorporated
Amdahl Corporation
Apple Computer, Inc.
AT&T
Bell & Howell
Compaq Computer Corporation
Control Data Corporation
Cummins-Allison Corporation
Dictaphone Corporation
Digital Equipment Corporation
Eastman Kodak Company
Epson America, Inc.
Fujitsu America, Inc.
Harris/Lanier
Hewlett-Packard Company
Hitachi Computer Products (America), Inc.
Honeywell Bull Inc.
Honeywell Keyboard Division
IBM Corporation
ICL, Inc.
Information Handling Services
Multigraphics, a Division of AM International, Inc.
NCR Corporation
Panasonic Industrial Company
Philips Business Systems, Inc.
Prime Computer, Inc.
Sony Corporation of America
Tandem Computers Incorporated
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Accel Partners
Access Publishing Company
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ADP Financial Information Services
Advanced System Design, Inc.
Advanced Technology Resource
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Age Marketing (Equifax)
Agenda Technology
AIRDATA, INC.
Alex. Brown & Sons Inc.
AMERICAN BANKER-Bond Buyer (ITOL)
American Communications & Engineering, Inc.
AMERICAN CONNECTION, INC.
American Express Strategic Bus. Sys. Gp.
American International Communications
American Stock Exchange Clearing Corp.
American Stock Exchange International, NV
American Stock Exchange Market Data Communications
American Stock Exchange Realty Assoc., Inc.
American Transtech (AT&T)
Ameritech
Ameritech Communications, Inc.
Ameritech Credit Corp.
Ameritech Development Corp.
Ameritech Mobile Communications, Inc.
Ameritech Publishing, Inc.
Ameritech Services
AMEX Commodities Corp.
AMH Associates
Amidon/Litman Associates
Martha Amram

AMVOX, INC.
Anderson, Benjamin, Read & Haney, Inc.
Applied Communications, Inc. (US West)
Applied Data Research (Ameritech)
Applied Information Services
Applied Information Services Inc.
Applied Optical Media Corporation
Applied Technology Investors, Inc.
Arthur Andersen & Co.
ASEC International, Inc.
Aspen Systems Corporation (Wolters Samson)
Associated Enterprises, Inc.
The Associated Press New Media Marketing Group
AT&T
AT&T Conversant Systems (AT&T)
Audio Information Sciences, Inc.
Audiotex Directory & Buyer's Guide
AutEx Systems Inc. (ITOL)
Automated Directory Services, Inc./ADS 1001

Dr. Claire Badaracco
Barron's Natl. Bus. & Fin. (Dow Jones)
Baruch Defense Marketing, Inc.
BASELINE II Inc (Baseline)
H.M. Bazoian Co.
Toni Carbo Bearman
Bear, Stearns International Corporation
Bechtel Information Services
Beckerman Associates
Bedford Advisors, Inc.
Bell Atlantic
Bell Communications Research
Bell of Pennsylvania (Bell Atlantic)
BellSouth Advanced Networks (BellSouth)
BellSouth Advertising & Publishing
BellSouth Corporation
BellSouth Enterprises
BellSouth Information Systems
BellSouth International

BellSouth National Publishing
BellSouth Services
BellSouth Systems Technology
Bernan Associates
The Bernoulli Collection
L.M. Berry & Co. (BellSouth)
Berul Associates, Ltd.
THE BERWICK GROUP
Bidnet Inc. (D&B)
BIOSIS
Peter C. Bishop
BIX-BYTE Info Exchange (McGraw-Hill)
Black's Guide, Inc. (McGraw-Hill)
Blair Audiotex Productions
BNA Communications Inc.
BNA Electronic Media Division (BNA)
BNA International Inc.
Boice Dunham Group
THOMAS BOOKWALTER
Boston Technology, Inc.
R.R. Bowker Company (Reed Telepublishing)
Bowne & Co., Inc.
Bridge Data Company
Brite Voice Systems, Inc.
Broadview Associates
BRS Information Technologies (TBG, Inc.)
Buraff Publications, Inc. (BNA)
The Bureau of National Affairs, Inc.
Christopher Burns, Inc.
Business Week (McGraw-Hill)

CACI/Federal
California Information Company
Callaghan & Company (ITOL)
Cambridge Information Group
Carinet
The Carswell Company Limited (ITOL)
C.A.S. COMSEARCH
CBOE Trading Operations

CBR Information Group, Inc. (Praxis)
CCMI (McGraw-Hill)
CDA Investment Technologies
CellNet Canada
Chase Global Electronic Banking
CHERCHER
Chicago Board of Trade Information Systems and Telecommunications Group
CineBooks, Inc. (McPherson's)
Citibank Global Report
Citibank Online Delivery Systems
Citicorp Information Center
Claritas Corporation
Clark Boardman Company Ltd. (ITOL)
COADE (McGraw-Hill)
Cognivation, Inc.
Thom Collins Consulting
Combs-Moorhead Associates, Inc. (InfoProbe Inc.)
Commerce Clearing House, Inc.
Commodity Communications Corp.
Commodity Perspective (Knight-Ridder)
COMPEX Corporation
ComPlan, Incorporated
Comp-U-Card Online (Comp-U-Card Int'l)
Compumark, Inc. (A.C. Nielsen)
COMPUTER BUSINESS
Computer Intelligence
Computer Science Capital Corporation
The Conference Board Data Base
Congressional Information Service, Inc. (Elsevier)
CONNTEX (SNET)
CONSISDATA Ltda.
ConverSys, Inc.
Cooper Heller Research
Coopers & Lybrand
Coordinated Management Systems
Copyright Clearance Center, Inc.
Cordatum, Inc.
Corporate Management & Marketing Consultants, Inc.

Corporate Technology Information Services, Inc. (CorpTech)
COURTHOUSE TM Records, Inc.
COVIDEA (AT&T/Chemical Bank)
Richard J. Cowles Consulting
CoWorks
C & P Telephone Co. (Bell Atlantic)
CPAid, Inc. (ITOL)
The Credit Bureau, Inc. (Equifax)
Credit Bureau Marketing, Inc. (Equifax)
Cresap—a Towers Perrin company
CTL Communications Inc.

D&B Computing Services, Inc.
DAFSA
Damar Corporation (Praxis Group)
Dana Advertising
Data America Corporation
Data Courier (Bell & Howell)
Data Resources, Inc. (McGraw-Hill)
Data Retrieval Corporation
Data Quality
Database America
Database Development
Database Publishing Company
Database Services, Inc.
Dataline, Inc.
DATALINE DADOS INTERNATIONAIS LTDA.
Datalogics Inc.
Datapro Research Corporation (McGraw-Hill)
Dataquest Incorporated (D&B)
DATAQUICK INFORMATION SYSTEMS
Data Stream (D&B)
DataTimes Corporation (Oklahoma Publishing)
DATEXT, INC. (Lotus)
Datis Corporation
Dealers' Digest, Inc. (United Newspapers)
Richard De Boo Publishers (ITOL)
Delmar Publishers Inc. (ITOL)
Derwent Inc. (International Thomson)

Desktop Data, Inc.
Deucalion Venture Partners
DIALOG Information Services, Inc. (Lockheed)
Dialogic Corporation
Digital Information Group
Digital Sound Corporation
DirectoriesAmerica
Disclosure Incorporated
Document Center
DOCUMENT SYSTEMS, INCORPORATED
Donnelley Directory (D&B)
Donnelley Information Publishing (D&B)
Donnelley Marketing Information Services (D&B)
Rueben H. Donnelley (D&B)
Dow Jones & Company Inc.
Dow Jones Audiotex Services
Dow Jones Broadcast Information Services
Dow Jones Information Services Group
Dow Jones Interactive Information Services
DMS, Inc.
D-S Marketing, Inc. (DataStar)
Dun & Bradstreet Business Education Services
Dun & Bradstreet Business Information
Dun & Bradstreet Business Marketing
Dun & Bradstreet Canada Ltd.
Dun & Bradstreet Computing Services
The Dun & Bradstreet Corporation
Dun & Bradstreet Credit Services
Dun & Bradstreet Financial Services Industry
Dun & Bradstreet Information Resources
Dun & Bradstreet Information Systems
Dun & Bradstreet International
Dun & Bradstreet Planning Services
Dun & Bradstreet Program Management Services
Dun & Bradstreet Receivable Management Services
Dun & Bradstreet Reports Magazine
Pat Dunbar & Associates
Dun's Business Month
Dun's Marketing Services

DunsGate (D&B)
DunsNet (D&B)
DunsPlus (D&B)
Duston Associates—Information Strategists

Joseph L. Ebersole Associates
Electronic Information Systems
Electronic Publishing Svcs., Inc.
Elrick & Lavidge, Inc. (Equifax)
Enercom, Inc. (Equifax)
Equifax Canada
Equifax Center for Information Research
Equifax Inc.
Equifax Insurance Systems, Inc.
Equifax Marketing Services
Equifax Research
Equifax Services Inc.
ERISCO (D&B)
Executive Telecom System, Inc. (BNA)
Expert Technologies, Inc.
Export Network, Inc.
Exporters Encyclopedia (D&B)
EXTRANET
Exxon Research and Engineering Company

Fairfax Advertising
FAXplus
FEICO (McGraw-Hill)
Anne Conway Fernald Consulting
FiberLan, Inc. (Bell South)
FIND/SVP
FINIS: Financial Industry Information Service
(Bank Marketing Association)
FINNIGAN U S A
FIRSTMARK
First Bank of Minneapolis Communications Industries Division
First Call (ITOL)
Five Star Services Company, Inc.
Focus Enterprise Group
Focus Research Systems (D&B)

The Freedonia Group
FROST & SULLIVAN, INC.
Frumkin Associates
FSP & Associates
FUINCA
Fulcrum Technologies Inc.
Future Computing Incorporated (McGraw-Hill)
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Gale Research Company (ITOL)
Gardner, Carton & Douglas
Garvin Information Services (MAINAI)
General Information Systems
Geocapital
Geographic Data Technology, Inc.
Global Finance Information, Inc.
Global Villages
Goldman, Sachs & Co.
Alfred M. Goodloe Associates, Inc.
Edward J. Gottsman
GRALIN Associates
Richard J. Greene + Associates, Chartered
Grolier Electronic Publishing, Inc.
GTE
GTE Florida Teleguide
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HTL Ventures
Halcyon Associates
Hambrecht & Quist Group
Handy Associates Information Division
The Haran Management Group, Inc.
Harper & Harper Limited
The Health Professions Publ. (Lippincott)
Ronald L. Henderson Associates
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Peter Hernon, Ph.D.
Hershey & Hershey
HORIZONS Associates
Horizon Management Systems, Inc.

Forest Horton
Howard-Sloan Communications Search, Inc.
Human Resource Management Services (HRMS)
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IBM/Academic Information System
IBM Corporation
IBM Information Network
IBM Information Services Software
IBM Information Systems Group
IBM/SRA, Inc.
IBM World Trade Americas
ICC Information Group Ltd.
ICS Office Technologies
IDA Ireland
IGW Information Group West Corporation
Illinois Bell (Ameritech)
IMS Agency Information
IMS International Inc.
Inbound Programs, Inc.
INDESYS, INC.
The Index Group
Indiana Bell (Ameritech)
iNet 2000 (Telecom Canada)
Inet Company of America
InFiNet (ITOL)
Info Globe (International Thomson)
Infomart (Southam Inc.)
InfoMedia Corp. (formerly Datatron)
Information America, Inc.
Information Consulting
Information Interface Investments
Information Market Indicators Inc.
INFORMATION ON DEMAND, INC. (Pergamon)
Information Policy Consulting
Information Publishing Corporation
INFORMATION SOURCES, INC.
Information Systems Marketing Company (ISM)
Information Workstation Group

INFORUM Associates
InfoStar, Inc.
InfoTech
IN. GATE Technology
INMAGIC Inc.
INNOVATION 128
INPUT
Installed Technology International
INSTINET CORPORATION (REUTERS)
Institutt for Journalistikk (Norwegian News Association)
INTELLENET, INC.
Intellibanc Corporation
Interactive Market Systems
Interactive Response Media
International Data Solutions Corp.
International Development Center
International Thomson Business Press, Inc. (ITOL)
International Thomson Communications Inc. (ITOL)
International Thomson Holdings Inc. (ITOL)
International Thomson Information Inc. (ITOL)
International Thomson Legal and Professional (ITOL)
International Thomson Organization (ITOL)
International Thomson Professional Publishing (ITOL)
International Thomson Publishing Co. (ITOL)
International Thomson Retail Press (ITOL)
International Thomson Technology (ITOL)
International Thomson Transport Press Inc. (ITOL)
International Transcription Services
Intertel Communications, Inc.
Investment Directions, Inc.
INVISION/Robbins Associates
IRIS Corporation

J F Enterprises
Jamaica National Investment Promotion
Jane's Information Group (ITOL)
Jane's Publishing Company Ltd. (ITOL)
Jaywyn Telecommunications, Ltd.
JJS Systems, Inc.

JOBNET, Inc.
The Journal of Commerce (Knight-Ridder)
The Jupiter Group (McGraw-Hill)

Kapor Enterprises
The KBL Group, Inc.
Marlyn Kemper
E.F. Keon Co.
Knight-Ridder Business Information Services
Knight-Ridder Commodity News Services, Inc.
Knight-Ridder Commodity Perspective Research Bureau
Knight-Ridder Financial Information
Knight-Ridder Financial News
Knight-Ridder Money Center
Knight-Ridder Tradecenter
Knowledge Access International, Inc.
Knowledge Resources, Inc.
KYODO NEWS INTERNATIONAL, INC.
KRS Remote Sensing

Land Decision Technologies
Landmark Publications (US WEST)
Laser Resources, Inc.
Lawler Associates
Leading National Advertisers
Learned Information, Inc.
Legi-Slate (Washington Post)
LIMA LINK srl
LINK Resources Corp. (IDC)
J. B. Lippincott Company
Arthur D. Little Information Services Practice
LOMALEX Audio Directories, Inc.
Rita Lombardo Telemarketing
Lotus Development Corporation Information Services Division
LYNX Communications Corporation

MA Management
Mainstream Data
Main Street Marketing U.S.A., Inc. (Praxis)
Malhotra & Associates, Inc.

John C. Maloney & Associates, Inc.
Management Information Technology Inc.
Donald Marchand
Market Data Retrieval (D&B)
Marketel International, Inc.
The Marx Group
The MAXIMA Corporation
Mayer, Brown & Platt
McCain, Russell & Associates
Dr. Charles R. McClure
McCormack & Dodge (D&B)
McGraw-Hill Book Company
McGraw-Hill Broadcasting Co., Inc.
McGraw-Hill, Inc.
McGraw-Hill Information Management
McGraw-Hill Information Systems Company
McGraw-Hill International Book Company
McGraw-Hill Publications Company
McGraw-Hill Ryerson (Canada Group)
McGraw-Hill Training Systems
McKinsey & Company, Inc.
McNulty Development, Inc.
McPherson's America Inc. (McPhersons's Ltd.)
Mead Data Central
MEDIA 4
Medialink International Corporation
Medical Economics Company, Inc. (ITOL)
MEDSTAT Systems, Inc.
Memory-Tech Inc. (Mitsubishi)
Meredith Diversified Company
METROPOLITAN COMMUNICATIONS
Michigan Bell (Ameritech)
MicroInfo
Micromedex, Inc. (Mead)
Micromedia Limited
Microspace Communications Corporation
Midlun
Minitel USA
MISSION: A Consulting Group

Mitchell International
MLR Publishing Company
MMS International
MMS International Hong Kong (MMS)
MMS International U.K. (MMS)
Monchik-Weber (McGraw-Hill)
Moody's Investors Service (D&B)
Moore Data Database Publishing Group
Mortgage Commentary Publications (ITOL)
Morgan Rand Publications, Inc.
MORTEK Corporation
David Moses Consulting
Mountain Bell (U S WEST)
MSRS, Inc.
MultiComm Telecommunications Corp. (Amway)
MultiLink Incorporated

NASD Market Services, Inc.
National Information Technology Council, Inc.
National Phone Services, Inc.
National Planning Data Corporation
National Satellite Paging, Inc.
(Mobile Communications/Radiofone/NPR)
Natural MicroSystems Corporation
Nelson Canada (ITOL)
Neodata Services (D&B)
NERAC, Inc.
Neufeld Associates
Nevada Bell (Pacific Telesis)
New England Telephone (NYNEX)
New York Futures Exchange, Inc. (New York Stock Exchange)
New York Stock Exchange Market Data Division
New York Telephone Co. (NYNEX)
NewsBank (Readex)
Newsday Electronic Information Services (Times Mirror)
NewsNet Inc. (Independent Publications)
Newspaper Advertising Bureau Marketing
& New Technology Department
Newsweek (Washington Post Co.)

A.C. Nielsen Co. (D&B)
Nielsen Clearing House (D&B)
Nielsen Home Video (D&B)
Nielsen Marketing Research (D&B)
Nielsen Media Research (D&B)
Nikkei (McGraw-Hill)
N N Telemanagement
Kendrick Noble
North Star Communications Group, Inc.
Northern Telecom Meridian Mail
Northwestern Bell (U S WEST)
NTS Data Service, Inc.
Numerax, Inc. (McGraw-Hill)
NYNEX Corporation
NYNEX Business Info. Systems (NYNEX)
NYNEX Development Co. (NYNEX)
NYNEX Info. Resources (NYNEX)
NYNEX Service Co. (NYNEX)

Occupational Health Services, Inc.
Octel Communications Corporation
Official Airline Guides, Inc. (D&B)
Offshore Information Services Inc.
Ohio Bell (Ameritech)
Omnigraphics, Inc.
Omniphone, Inc.
ON Technology, Inc.
Online Computer Systems, Inc. (Reed Telepublishing)
H. B. Oppenheimer Inc.
OptImage Interactive Services Company
(Philips/R.R. Donnelley)
Option Line
Paul Orme & Associates, Inc.
Oro Communications Technology, Inc.
The Oryx Press
Osborne (McGraw-Hill)
Dr. Benjamin Ostrofsky
Ottaway Newspaper (Dow Jones)
Overseas Keyboarding Services

Pacific Bell (Pacific Telesis)
Pacific Bell Directory (Pacific Telesis)
Pacific Northwest Bell (U S WEST)
Pacific Teleconnect, Inc.
Pacific Telesis Corp.
Pacific Telesis Group
Pacific Telesis International
PacTel Corporation (Pacific Telesis)
PacTel Finance (Pacific Telesis)
PacTel Infosystems (Pacific Telesis)
PacTel Properties (Pacific Telesis)
Paget Properties, Inc.
PaineWebber Group Inc.
Panel Publishers, Inc. (Wolters Samson)
Paradigm Solutions Corp. Division
Passport Telematique
Peat Marwick Main & Co.
Perception Technology
Pergamon ORBIT Infoline, Inc.
PERQ Corporation
Petroleum Information (D&B)
Pharmaco-Medical Documentation, Inc.
Philips and DuPont Optical Business Company
Philips New Media Systems
Phone Programs, Inc.
PICK-A-WINNER
Pike & Fischer, Inc. (BNA)
The Pofcher Company
R.L. Polk Motor Statistical Div.
Practitioners Publishing Co., Inc. (ITOL)
Post-Newsweek Stations (Washington Post)
Praxis Group, Inc.
Prentice-Hall Information Services (Gulf & Western)
PRN Associates
Probase Information Networks
Prodigy Services Company (IBM/Sears)
Productions-By-Phone, Inc.
PsycINFO (American Psychological Assoc.)

QUANTUM Computer Services, Inc.
Quotron Systems, Inc. (Citibank)

Rand McNally—TDM, Inc.
READEX Microprint Corporation (NewsBank)
Real Decisions Corporation
Real Estate Data, Inc. (Praxis)
Real Learning Corporation
Reference Technology Inc.
The Research Link, Inc.
Research Publications (ITOL)
REUTERS
REYCO
Riley & Johnson
Joseph M. Ripley
Ed Ritvo Consulting
Rolm Corp. (IBM)
Routledge, Chapman & Hall, Ltd. (ITOL)
Bob Rubinyi

Sanborn Map Company (Praxis)
Savage Information Services (formerly SPUR)
Savage Information Services
Scientific Consulting
Schwab Investor Information Service
SEAT (Division of Stet S.P.A.)
SEC Online
SEM Systems
SENCOR
SGML Publishing Systems Ltd. (Datalogics)
I.P. SHARP ASSOCIATES LIMITED (REUTERS)
Shepards (McGraw-Hill)
Sheshunoff Information Service, Inc. (IOTL)
R. Shriver Associates
SilibiS Corporation
Charles E. Simon and Company
SIRCo International (Selected Information Retrieval Company)
SiteSelex, Inc.
Slater Hall Information Products

SNET Communication Services
SNET Directory Operations
sociological abstracts, inc.
Software Ventures International Corp.
Solution Associates
The Sombers Group, Inc.
SONECOR Network Services, SNET
SONECOR Systems, Division of SNET
Source Telecomputing Corporation
SOURCENET Corporation
South Central Bell (BellSouth)
Southern Bell (BellSouth)
Southern New England Telephone ("SNET")
South-Western Publishing Co. (ITOL)
Southwestern Bell Corporation
Southwestern Bell Mobile Systems, Inc.
Southwestern Bell Publications, Inc.
Southwestern Bell Telecommunications, Inc.
Southwestern Bell Telephone Company
Spada Organization Limited
Professor Arnold Spinner
Standard & Poor's Compustat Services (McGraw-Hill)
Standard & Poor's Corporate Information Company (McGraw-Hill)
Star King Communications
States News Service
Dr. Ray L. Steele
Stigelman Associates, Inc.
Stina Corporation
Straat Group Incorporated
Strategic Information Management
Strategic Intelligence Systems, Inc.
Strategic Marketing Systems, Inc.
Supreme Data Company Ltd.
John Sviokla
Systemetrice (McGraw-Hill)

Taconic Development, Inc.
Tax Management, Inc. (BNA)

Betty W. Taylor
Technical Data International (ITOL)
Technical Economic Services (D&B)
TECHWORLD
Telebase Systems, Inc.
Telecompute/CM
Telekurs AG Financial Information Division
Teleline, Inc.
Telenet Communications Networks
Telephone Announcement Systems, Inc.
Telephone Information Services
Telescope
Telstar Voice Systems
Teltech Resource Network
Tescor, Inc.
Thomas Online
Thomson Directories (ITOL)
Thomson Information Services Ltd. (ITOL)
Thomson & Thomson (ITOL)
Thomson Travel (ITOL)
Time Inc.—Magazine Group
Time-Sensitive Delivery Guide, Inc. (Pitney Bowes)
Touche Ross & Co.
Trade Data Reports Inc.
tradeNET, Inc.
Trading Systems Technology (Waters Info.)
Traffic Resources Corporation
Transactions Marketing, Inc.
TransData Corporation (ITOL)
Travaco DBIS, Inc.
Travelmation Corporation
TRI-CO (U S WEST)
Trinet, Inc.
TRW
TRW Customer Service Division
TRW Information Systems Group
TRW Overseas, Inc.
TylData B.V.

UNICOM
UNISON Telecommunications Service
Unisys Network Applications Group
United Communications Computer Svc. Group
United Home Equity Services Inc. (Praxis)
University Microfilms International (UMI) (Bell & Howell)
UPDATA Publications, Inc.
URIX Corporation (Audio Info Sci.)
USACO
US Payphone Inc. (Info. Publ. Corp.)
U.S. Videotel
U S WEST Advanced Technologies
U S WEST Corporate Communications
U S WEST Direct
U S WEST, Inc.
U S WEST Information Systems
U S WEST Knowledge Engineering, Inc.
U S WEST Strategic Planning
Utlas, Inc. (ITOL)
Utlas International US Inc. (ITOL)

Value Line Data Services, Inc. (Value Line, Inc.)
Johan Van Halm & Associates
Van Nostrand Reinhold Company (ITOL)
Vanguard Telecommunications, Inc.
Venture Economics, Inc.
Veronis, Suhler & Associates Inc.
Videodial, Inc. (Telesystemes)
Vidiotex Communication
VNU Business Information Services, Inc.
VoiceCom Systems
Voice-Gram, Inc.
Voice Response, Inc. (Call-It Co.)
VoiceMail, Inc.
Voicemail International, Inc.
Voicetek Corp.
Raymond F. Vondran
VORTECH DATA, INC.
VU/TEXT Information Services (Knight-Ridder)

Wadsworth Electronic Publishing (ITOL)
Wadsworth Inc. (ITOL)
Wall Street Computer Review
WANG Financial Information Services Corp.
The Warbler Group
Warren, Gorham & Lamont Inc. (ITOL)
The Washington Post
The Washington Post Company
Washington Service Bureau
Washington Post/LA Times
Waters Information Service, Inc.
Watzman + Keyes Information Design
Benjamin Weil
H. Skip Weitzen
Weitzman & Sachs
Welsh, Carson, Anderson & Stowe
West Professional Services
Westbridge Information Services
WESTLAW (West Publishing)
Whelan Associates, Inc.
John Wiley & Sons, Inc.
H. Donald Wilson Inc.
Windsor Systems Development, Inc.
Windsor Technologies, Ltd.
Wisconsin Bell (Ameritech)
Dr. Robert A. Wood
WorldSource Ltd.
Wright Database Services

Zapodel Inc.